

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

1	IN THE MATTER OF	)	
	RICHARD L. MARTIN	)	
2	d.b.a. William Daniels	)	
	Apartments, c/o L.E.	)	
3	Martin Enterprises, Ltd.,	)	
		)	
4	Appellant,	)	PCHB No. 493
		)	
5	vs.	)	FINAL FINDINGS OF FACT,
		)	CONCLUSIONS OF LAW
6	PUGET SOUND AIR POLLUTION	)	AND ORDER
	CONTROL AGENCY,	)	
7		)	
	Respondent.	)	
8		)	

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9        THIS MATTER being an appeal of a \$50.00 civil penalty for an  
10 alleged smoke emission violation of respondent's Regulation I;  
11 having come on regularly for hearing before the Pollution Control  
12 Hearings Board on the 6th day of May, 1974, at Seattle, Washington;  
13 and appellant, Richard L. Martin, appearing pro se. and respondent,  
14 Puget Sound Air Pollution Control Agency, appearing through its  
15 attorney, Keith D. McGoffin; and Board members present at the  
16 hearing being Walt Woodward, presiding officer, and Mary Ellen  
17 McCaffree; and the Board having considered the sworn testimony,  
18 exhibits, records and files herein and having entered on the

1 23rd day of May, 1974, its proposed Findings of Fact, Conclusions  
2 of Law and Order; and the Board having served said proposed Findings,  
3 Conclusions and Order upon all parties herein by certified mail,  
4 return receipt requested and twenty days having elapsed from said  
5 service; and

6 The Board having received no exceptions to said proposed  
7 Findings, Conclusions and Order; and the Board being fully advised  
8 in the premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
10 Findings of Fact, Conclusions of Law and Order, dated the 23rd day  
11 of May, 1974, and incorporated by this reference herein and attached  
12 hereto as Exhibit A, are adopted and hereby entered as the Board's  
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 25th day of June, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16  
17 Walt Woodward  
18 WALT WOODWARD, Chairman

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FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

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LARENE C. BARLIN

POLLUTION CONTROL HEARINGS BOARD

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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
RICHARD L. MARTIN  
d.b.a. William Daniels  
Apartments, c/o L. E.  
Martin Enterprises, Ltd.,  
  
Appellant,  
  
vs.  
  
PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,  
  
Respondent

PCHB No. 493

## FINDINGS OF FACT, CONCLUSIONS AND ORDER

PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent )

This matter, the appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) in the Washington Commerce Building, Seattle, on May 6, 1974.

Appellant appeared pro se. Respondent appeared through Keith D. McGoffin. Richard Reinertsen, Olympia court reporter, recorded the

**EXHIBIT A**

1 proceedings.

2 Witnesses were sworn and testified. Exhibits were admitted.

3 From testimony heard and exhibits examined, the Pollution Control  
4 Hearings Board makes these

5 FINDINGS OF FACT

6 I.

7 On November 23, 1973, during the conversion of a boiler heating  
8 unit from crude oil to natural gas-Diesel oil from the boiler stack of  
9 the William Daniels Apartments, 3016 First Avenue, Seattle, King County,  
10 there was emitted for six consecutive minutes black smoke of opacity  
11 equivalent to No. 4 on the Ringelmann Scale.

12 II.

13 Section 9.03 of respondent's Regulation I makes it unlawful to  
14 cause or allow the emission for more than three minutes in any one-hour  
15 period of smoke darker in shade than No. 2 on the Ringelmann Scale.  
16 Section 3.29 of Regulation I authorizes the imposition of a civil  
17 penalty not to exceed \$250.00 for any violation of Regulation I.  
18 Article Six of Regulation I provides for the application and issuance  
19 by respondent of permits for construction and installation of air  
20 contaminant equipment.

21 III.

22 The incident described in Finding of Fact I having been observed  
23 by an inspector on respondent's staff, Notice of Violation No. 8976,  
24 citing Section 9.03 of Regulation I, was issued by respondent to  
25 appellant. Subsequently, and in connection therewith, Notice of Civil  
26 Penalty No. 1280, in the sum of \$50.00, was served on appellant by

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 respondent, that penalty being the subject of this appeal.

2 IV.

3 Appellant became owner of the William Daniels Apartments on  
4 June 1, 1973. Dissatisfied with crude oil as the fuel for the apartments'  
5 heating unit, he contracted in October, 1973 with Washington Natural  
6 Gas Company for the conversion of the heating unit to a burner fired either  
7 by natural gas or Diesel oil. This new unit, designed to assure more  
8 pollution-free emissions, cost appellant about \$3,000.00. The conversion  
9 was sub-contracted by Washington Natural Gas Company to Blue Flame  
10 Service.

11 V.

12 On November 8, 1973, Blue Flame Service filed in appellant's name  
13 but without the personal knowledge of appellant a Notice of Construction  
14 for the conversion under Article Six of Regulation I. On November 12,  
15 1973, respondent issued to Blue Flame Service, as "applicant", and  
16 to appellant, as "owner", a Notice of Construction Permit for the  
17 conversion. The permit states on its face that the permit does not  
18 relieve "applicant" or "owner" from infractions of Regulation I.

19 VI.

20 Any Conclusion of Law hereinafter stated which is deemed to be a  
21 Finding of Fact is adopted herewith as such.

22 From these findings, the Pollution Control Hearings Board comes  
23 to these

24 CONCLUSIONS

25 I.

26 There was a violation of Section 9.03 of respondent's Regulation I

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 from the boiler stack of the William Daniels Apartments as described  
2 in Finding of Fact I.

3 II.

4 It is easy for this Board to conclude that appellant is a  
5 technical violator. He is, and at the time of the violation, was the  
6 "owner" of the William Daniels Apartments. As such, he has certain  
7 responsibilities and obligations to see to it that his apartment  
8 structure stays in compliance with clean-air regulations. In this,  
9 the Board observes that appellant appears to be poorly informed about  
10 respondent's Regulation I. However, appellant--at a considerable cost--  
11 contracted to have the apartments' heating unit converted to a more  
12 pollution-free device. He relied on the contracting firm to perform  
13 the conversion.

14 III.

15 If the converting contractor also had been a party to this matter,  
16 the Board would refuse to assess a penalty against appellant. The fact  
17 that the contractor is not a party to this matter should not, and does  
18 not, alter the Board's view as to appellant.

19 IV.

20 Any Finding of Fact herein which is deemed to be a Conclusion of  
21 Law herewith is adopted as same.

22 Therefore, the Pollution Control Hearings Board issues this

23 ORDER

24 The appeal is denied, the entire civil penalty of \$50.00 is  
25 suspended and it is suggested to respondent that this Board might  
26 take a different view of this emission violation were it to come before

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

1 this Board with the same facts but a different appellant or appellants.

2 DONE at Lacey, Washington this 23<sup>rd</sup> day of May, 1974.

3 POLLUTION CONTROL HEARINGS BOARD

4  
5 Walt Woodward  
6 WALT WOODWARD, Chairman

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8 Mary Ellen McCaffree  
9 MARY ELLEN MCCAFFREE, Member

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27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER